



IT IS SO ORDERED.
Signed June 25, 2015

A handwritten signature in cursive script, reading "Arthur S. Weissbrodt".

Arthur S. Weissbrodt
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 14-53190-ASW
]	
OSCAR A. ADLAWAN and]	Chapter 7
EMELINDA P. ADLAWAN,]	
]	
]	Hrg. Date: June 25, 2015
Debtors.]	Hrg. Time: 1:45 p.m.

**TENTATIVE DECISION RE: MOTION TO CONVERT;
OBJECTION TO EXEMPTIONS**

Before the Court is the motion of Debtors Oscar A. Adlawan and Emelinda P. Adlawan, represented by attorney Timothy McCandless, to reconvert this bankruptcy case from a Chapter 7 to a Chapter 13 case. The Chapter 7 Trustee, Fred Hjelmset, represented by attorney Gregg Kleiner, opposes the motion. Also before the Court is the Trustee's Objection to Debtors' Claims of Exemptions. Debtors have not filed a response to that objection.

Taking the exemption issue first, the Trustee objects to two exemptions claimed by Debtors on Amended Schedule C filed May 4, 2015. First, Debtors have claimed a homestead exemption of \$175,000 in their residence under Cal. Civ. Proc. Code § 704.730(a)(3). The evidence submitted by the Trustee indicates that Debtors are not eligible for this amount of exemption because they were not 65

1 years old on the petition date; thus the maximum exemption Debtors
2 may take in their residence is \$100,000 under Cal. Civ. Proc. Code
3 § 704.730(a)(2). The Trustee's objection to this exemption is
4 sustained.

5 Second, Debtors have claimed an exemption under Cal. Civ.
6 Proc. Code § 704.070 in \$3,800 in cash maintained in a Wells Fargo
7 Bank account and a \$3,800 tax refund. The Trustee objects because
8 there is no evidence that these amounts constitute paid earnings
9 under § 704.070. Section § 704.070 provides for an exemption for
10 "paid earnings," which is defined as:

11 earnings as defined in Section 706.011 [compensation
12 payable by an employer to an employee – wages, salary,
13 commission, bonus, etc.] that were paid to the employee
during the 30-day period ending on the date of the levy.

14

15 Cal. Civ. Proc. Code § 704.070(a)(2).

16 There is no evidence that the amounts at issue were received
17 within 30 days of the petition date. In fact, the tax refund had
18 not been received as of the petition date. These sums thus do not
19 qualify for the paid earnings exemption. The Trustee's objection to
this exemption is also sustained.

20 Turning to the motion to convert, at the prior hearing on the
21 motion held on May 22, 2015, this Court ordered Debtors to file, by
22 June 15, 2015, a declaration attaching a chapter 13 plan and
23 explaining specifically how that plan meets the requirements for
24 confirmation, particularly § 1325(a)(4). The Court also ordered
25 Debtors to respond to the Trustee's objection to exemptions, unless
26 the matter were resolved. If not, the declaration was to provide
27 for alternate treatment depending on the final amount of the
28 exemption.

1 On June 16, 2015, Debtors' counsel, not Debtors, submitted a
2 declaration attaching a proposed chapter 13 plan, which counsel
3 states, without analysis, meets the confirmation requirements of
4 § 1325(a)(4). Counsel did not provide a calculation of how the
5 liquidation test is met or any analysis of how that test is met if
6 the Trustee's objection to exemptions is sustained. Counsel states
7 that the proposed plan provides for payment in full to all allowed
8 unsecured creditors over 60 months, which satisfies the liquidation
9 test. Counsel also states that Debtors have adequate disposable
10 income available to fund the chapter 13 plan, attaching Schedules I
11 and J, which reflect monthly net income of \$503.10. Debtors propose
12 a plan payment of \$464.50 over 60 months, for a total to be paid
13 into the plan of \$27,870.00. However, this case is already nearly
14 12 months old, and Debtors would not be able to "re-start" the 60
15 month period by re-converting. Conversion does not change the
16 filing date of the petition, the commencement of the case, or the
17 order for relief. See § 348(a). The Court may not approve a plan
18 where the plan payments or any modifications to the plan exceed
19 five years, or 60 months. § 1322(d) and § 1329(c). Thus, even if
20 \$27,870.00 is sufficient to satisfy the liquidation test, on its
21 face, the plan is not feasible or confirmable.

22 Additionally, Debtors have not addressed the objections filed
23 by the chapter 13 Trustee to Debtors' original plan. As pointed out
24 by the Trustee, the proposed plan is essentially the same plan the
25 Debtors failed to confirm when their case was pending in chapter
26 13, except that the plan payments have been increased slightly, and
27 the plan asserts it will pay creditors 100% of their claims. The
28 chapter 13 Trustee's objection included the assertion that the plan

1 needs to provide for a minimum amount to be paid to general
2 unsecured creditors of \$36,401.93. The chapter 13 Trustee also
3 requested a Broker's Price Opinion for the real property at 1681
4 Peachwood, San Jose, CA, copies of payment advices, and amendments
5 to Debtors' Statement of Current Monthly Income, Schedule B, and
6 Schedule F. The Trustee notes that the amended Schedule F attached
7 to the McCandless Declaration provides that unsecured claims have
8 been reduced by over \$101,700, but there is absolutely no evidence,
9 or even an explanation, of this reduction.

10 Finally, the Court notes that Debtors did not appear at their
11 most recently scheduled 341 meeting on June 23, 2015.

12 In short, Debtors have not met their burden of showing that
13 they can likely confirm a chapter 13 plan. Accordingly, the motion
14 to convert is denied. Counsel for the Trustee may submit proposed
15 forms of order as to the objection to exemptions and the motion to
16 convert.

17 This is a Tentative Decision. The parties may argue the matter
18 at the hearing scheduled for June 25, 2015 at 1:45 p.m.

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20 *****END OF TENTATIVE DECISION*****
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Court Service List

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